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PHILIPS LUMILEDS LIGHTING COMPANY,
14 LLC

15 UNITED STATES DISTRICT COURT
16 NORTHERN DISTRICT OF CALIFORNIA
17 OAKLAND DIVISION

18 EPISTAR CORPORATION,
19 Plaintiff,

20 v.

21 PHILIPS LUMILEDS LIGHTING
22 COMPANY, LLC,
23 Defendant.

24 AND RELATED COUNTERCLAIMS
25
26
27

Case No. C-07-5194 CW

**ADMINISTRATIVE REQUEST TO FILE
UNDER SEAL PURSUANT TO CIVIL L.R.
79-5 PHILIPS LUMILEDS LIGHTING
COMPANY'S MOTION FOR SUMMARY
JUDGMENT ON EPISTAR
CORPORATION'S CLAIM FOR BREACH
OF CONTRACT AND EXHIBITS 1, 2, 3, 6,
7, 8, 9, 11, 12, 14, 15, 16, 18, 19, 20, AND 21
TO THE DECLARATION OF RYAN
SCHER IN SUPPORT OF PHILIPS
LUMILEDS LIGHTING COMPANY'S
MOTION FOR SUMMARY JUDGMENT
ON EPISTAR CORPORATION'S CLAIM
FOR BREACH OF CONTRACT**

Pursuant to Civil L.R. 79-5 and the Protective Order entered by the administrative law judge in the ITC Investigation on December 8, 2005, Philips Lumileds Lighting Company, LLC (“Lumileds”) requests the following documents to be filed under seal:

1. Philips Lumileds Lighting Company, LLC’s Motion for Summary Judgment on Epistar’s Corporation’s Breach of Contract Claim contains pertinent excerpts and statements relying thereupon from the following documents: the Settlement Agreement entered into by Lumileds Lighting, U.S. LLC (now Philips Lumileds Lighting Co., LLC) and Epistar Corporation (“Epistar”) on or about June 20, 2004, to settle the lawsuit *Lumileds Lighting U.S., LLC v. Epistar Corp.*, Nos. C 02-5077 and C 03-1130 CW (PVT) (N.D. Cal.); Epistar Corporation’s Prehearing Brief, filed on July 14, 2006, in the U.S. International Trade Commission’s (“ITC’s” or “Commission’s”) investigation *In the Matter of Certain High-Brightness Light Emitting Diodes and Products Containing Same*, USITC Inv. No. 337-TA-556; the Corrected Prehearing Statement of Complainant Philips Lumileds Lighting Company, LLC, which it filed on July 17, 2006, in the ITC’s investigation *In the Matter of Certain High-Brightness Light Emitting Diodes and Products Containing Same*, USITC Inv. No. 337-TA-556; Epistar Corporation’s Seventh Supplemental Responses To Lumileds Lighting U.S., LLC’s First Set Of Interrogatories (Nos. 1-15), served on March 23, 2004, in the action *Lumileds Lighting U.S., LLC v. Epistar Corporation*, Case No. 02-5077 CW (EAI) (N.D. Cal.); Respondent Epistar Corporation’s Fourth Supplemental Responses To Complainant Lumileds Lighting U.S., LLC’s First Set Of Interrogatories, which it served on May 9, 2006, in the ITC’s investigation *In the Matter of Certain High-Brightness Light Emitting Diodes and Products Containing Same*, USITC Inv. No. 337-TA-556; a summary table prepared by counsel for Philips Lumileds, entitled “Comparison Of The Composition And Thickness Of The Layers In The 2004 OMA LEDs And The 2006 OMA I And II LEDs,” based on Epistar’s disclosures in Epistar’s Interrogatory Responses; the transcript of the March 27, 2006 deposition testimony of Mr. C.C. Lu in the ITC’s investigation *In the Matter of Certain High-Brightness Light Emitting Diodes and Products Containing Same*, USITC Inv. No. 337-TA-556, which was admitted as Complainant’s Exhibit CX 605C in that investigation; the transcript of the deposition testimony of Mr. C.C. Lu in the ITC’s investigation *In the Matter of Certain High-*

1 *Brightness Light Emitting Diodes and Products Containing Same*, USITC Inv. No. 337-TA-556,
 2 which was admitted as Complainant's Exhibit 606C in that investigation; the transcript of the
 3 June 28, 2006 deposition of Gerald B. Stringfellow, in the ITC's investigation *In the Matter of*
 4 *Certain High-Brightness Light Emitting Diodes and Products Containing Same*, USITC Inv. No.
 5 337-TA-556, which was admitted as Complainant's Exhibit 609C in that investigation; Lumileds
 6 Lighting U.S. LLC's Notice Of Motion And Motion To Compel Discovery From Epistar
 7 Corporation [Replacement], which it filed on March 10, 2004, in the action *Lumileds Lighting*
 8 *U.S., LLC v. Epistar Corp.*, Case No. C 02-5077 CW (PVT) (N.D. Cal.); Epistar Corporation's
 9 Opposition To Lumileds Lighting U.S., LLC's Motion To Compel Discovery, which it filed on
 10 March 16, 2004, in *Lumileds Lighting U.S., LLC v. Epistar Corp.*, Case No. C 02-5077 CW
 11 (PVT) (N.D. Cal); Lumileds Lighting U.S., LLC's Reply In Support Of Its Motion To Compel
 12 Discovery From Epistar Corporation, which it filed on March 23, 2004, in the action *Lumileds*
 13 *Lighting U.S., LLC v. Epistar Corp.*, Case No. C 02-5077 CW (PVT); Order Granting
 14 Defendants' Motion For Summary Judgment In Part And Denying Plaintiff's Cross-Motion For
 15 Summary Judgment, which was entered on June 14, 2001, in the consolidated action *United*
 16 *Epitaxy Company, Ltd. v. Hewlett-Packard Co.*, No. C 00-2518 CW (N.D. Cal.); Epistar's
 17 demonstrative exhibits RDX 500 (depicting Epistar's OMA I) and RDX 501 (depicting Epistar's
 18 OMA II), which were admitted into evidence in the ITC's investigation *In the Matter of Certain*
 19 *High-Brightness Light Emitting Diodes and Products Containing Same*, USITC Inv. No. 337-TA-
 20 556; Deposition Exhibit 15 from the January 29, 2004, Deposition of Mr. M.J. Jou in the action
 21 *Lumileds Lighting U.S. LLC v. Epistar Corporation*, Case No. C-02-05077 CW (N.D. Cal.),
 22 which was admitted into evidence as CX 427C in ITC's investigation *In the Matter of Certain*
 23 *High-Brightness Light Emitting Diodes and Products Containing Same*, USITC Inv. No. 337-TA-
 24 556; and the transcript of the January 29, 2004 30(b)(6) Deposition Of Ming-Jiunn Jou, which
 25 was taken in the action *Lumileds Lighting U.S. LLC v. Epistar Corporation*, Case No. C-02-
 26 05077 CW (N.D. Cal.). These documents are confidential and subject to one of the following
 27 Protective Orders, as individually described below: (1) The Protective Order entered by the
 28 administrative law judge in the ITC Investigation, a copy of that Protective Order has been

submitted as Exhibit A to the Declaration of Andrew J. Wu in Support of Philips Lumileds Lighting Company's Motion to Stay ("Wu Declaration"), filed with this Court on January 31, 2008, with Lumileds' motion to stay the present litigation; (2) the Stipulated Protective Order in the case *Lumileds Lighting U.S., LLC v. Epistar Corporation*, Case No. 02-5077 CW (EAI) (N.D. Cal.) attached as Exhibit A to the Declaration of Michael Lyons in the following declaration; and (3) the Protective Order in the case *United Epitaxy Company, Ltd. v. Hewlett-Packard Co.*, No. C 00-2518 CW (N.D. Cal.) attached as Exhibit B to the Declaration of Michael Lyons in the following declaration; and

2. Exhibit 1 to the Declaration of Ryan Scher in Support of Philips Lumileds Lighting Company, LLC's Motion for Summary Judgment on Epistar Corp.'s Claim for Breach of Contract is a true and correct copy of the Settlement Agreement entered into by Lumileds Lighting, U.S. LLC (now Philips Lumileds Lighting Co., LLC) and Epistar Corporation ("Epistar") on or about June 20, 2004, to settle the lawsuit *Lumileds Lighting U.S., LLC v. Epistar Corp.*, Nos. C 02-5077 and C 03-1130 CW (PVT) (N.D. Cal.). This document is confidential and subject to the Stipulated Protective Order in the case *Lumileds Lighting U.S., LLC v. Epistar Corporation*, Case No. 02-5077 CW (EAI) (N.D. Cal.) attached as Exhibit A to the Declaration of Michael Lyons in the following declaration; and

3. Exhibit 2 to the Declaration of Ryan Scher in Support of Philips Lumileds Lighting Company, LLC's Motion for Summary Judgment on Epistar Corp.'s Claim for Breach of Contract is a true and correct copy of excerpts from Epistar Corporation's Prehearing Brief, which it filed on July 14, 2006, in the U.S. International Trade Commission's ("ITC's" or "Commission's") investigation *In the Matter of Certain High-Brightness Light Emitting Diodes and Products Containing Same*, USITC Inv. No. 337-TA-556. This document is confidential and subject to the Protective Order entered by the administrative law judge in the ITC Investigation. A copy of that Protective Order has been submitted as Exhibit A to the Declaration of Andrew J. Wu in Support of Philips Lumileds Lighting Company's Motion to Stay ("Wu Declaration"), filed with this Court on January 31, 2008, with Lumileds' motion to stay the present litigation; and

4. Exhibit 3 to the Declaration of Ryan Scher in Support of Philips Lumileds Lighting Company, LLC's Motion for Summary Judgment on Epistar Corp.'s Claim for Breach of Contract is a true and correct copy of excerpts from the Corrected Prehearing Statement of Complainant Philips Lumileds Lighting Company, LLC, which it filed on July 17, 2006, in the ITC's investigation *In the Matter of Certain High-Brightness Light Emitting Diodes and Products Containing Same*, USITC Inv. No. 337-TA-556. This document is confidential and subject to the Protective Order entered by the administrative law judge in the ITC Investigation. A copy of that Protective Order has been submitted as Exhibit A to the Declaration of Andrew J. Wu in Support of Philips Lumileds Lighting Company's Motion to Stay ("Wu Declaration"), filed with this Court on January 31, 2008, with Lumileds' motion to stay the present litigation; and

5. Exhibit 6 to the Declaration of Ryan Scher in Support of Philips Lumileds Lighting Company, LLC's Motion for Summary Judgment on Epistar Corp.'s Claim for Breach of Contract is a true and correct copy of excerpts from Epistar Corporation's Seventh Supplemental Responses To Lumileds Lighting U.S., LLC's First Set Of Interrogatories (Nos. 1-15), which it served on March 23, 2004, in the action *Lumileds Lighting U.S., LLC v. Epistar Corporation*, Case No. 02-5077 CW (EAI) (N.D. Cal.). This document is confidential and subject to the Stipulated Protective Order in the case *Lumileds Lighting U.S., LLC v. Epistar Corporation*, Case No. 02-5077 CW (EAI) (N.D. Cal.) attached as Exhibit A to the Declaration of Michael Lyons in the following declaration; and

6. Exhibit 7 to the Declaration of Ryan Scher in Support of Philips Lumileds Lighting Company, LLC's Motion for Summary Judgment on Epistar Corp.'s Claim for Breach of Contract is a true and correct copy of excerpts from Respondent Epistar Corporation's Fourth Supplemental Responses To Complainant Lumileds Lighting U.S., LLC's First Set Of Interrogatories, which it served on May 9, 2006, in the ITC's investigation *In the Matter of Certain High-Brightness Light Emitting Diodes and Products Containing Same*, USITC Inv. No. 337-TA-556. This document is confidential and subject to the Protective Order entered by the administrative law judge in the ITC Investigation. A copy of that Protective Order has been submitted as Exhibit A to the Declaration of Andrew J. Wu in Support of Philips Lumileds

1 Lighting Company's Motion to Stay ("Wu Declaration"), filed with this Court on January 31,
2 2008, with Lumileds' motion to stay the present litigation; and

3 7. Exhibit 8 to the Declaration of Ryan Scher in Support of Philips Lumileds
4 Lighting Company, LLC's Motion for Summary Judgment on Epistar Corp.'s Claim for Breach
5 of Contract is a summary table prepared by counsel for Philips Lumileds, entitled "Comparison
6 Of The Composition And Thickness Of The Layers In The 2004 OMA LEDs And The 2006
7 OMA I And II LEDs," based on Epistar's disclosures in Exhibits 6 and 7, *supra*. This document
8 is confidential and subject to the Protective Order entered by the administrative law judge in the
9 ITC Investigation. A copy of that Protective Order has been submitted as Exhibit A to the
10 Declaration of Andrew J. Wu in Support of Philips Lumileds Lighting Company's Motion to Stay
11 ("Wu Declaration"), filed with this Court on January 31, 2008, with Lumileds' motion to stay the
12 present litigation; and

13 8. Exhibit 9 to the Declaration of Ryan Scher in Support of Philips Lumileds
14 Lighting Company, LLC's Motion for Summary Judgment on Epistar Corp.'s Claim for Breach
15 of Contract is a true and correct copy of excerpts from the March 27, 2006, deposition testimony
16 of Mr. C.C. Lu in the ITC's investigation *In the Matter of Certain High-Brightness Light Emitting*
17 *Diodes and Products Containing Same*, USITC Inv. No. 337-TA-556, which was admitted as
18 Complainant's Exhibit CX 605C in that investigation. This document is confidential and subject
19 to the Protective Order entered by the administrative law judge in the ITC Investigation. A copy
20 of that Protective Order has been submitted as Exhibit A to the Declaration of Andrew J. Wu in
21 Support of Philips Lumileds Lighting Company's Motion to Stay ("Wu Declaration"), filed with
22 this Court on January 31, 2008, with Lumileds' motion to stay the present litigation; and

23 9. Exhibit 11 to the Declaration of Ryan Scher in Support of Philips Lumileds
24 Lighting Company, LLC's Motion for Summary Judgment on Epistar Corp.'s Claim for Breach
25 of Contract is a true and correct copy of excerpts from the March 28, 2006, deposition testimony
26 of Mr. C.C. Lu in the ITC's investigation *In the Matter of Certain High-Brightness Light Emitting*
27 *Diodes and Products Containing Same*, USITC Inv. No. 337-TA-556, which was admitted as
28 Complainant's Exhibit 606C in that investigation. This document is confidential and subject to

1 the Protective Order entered by the administrative law judge in the ITC Investigation. A copy of
 2 that Protective Order has been submitted as Exhibit A to the Declaration of Andrew J. Wu in
 3 Support of Philips Lumileds Lighting Company's Motion to Stay ("Wu Declaration"), filed with
 4 this Court on January 31, 2008, with Lumileds' motion to stay the present litigation; and

5 10. Exhibit 12 to the Declaration of Ryan Scher in Support of Philips Lumileds
 6 Lighting Company, LLC's Motion for Summary Judgment on Epistar Corp.'s Claim for Breach
 7 of Contract is a true and correct copy of excerpts from the June 28, 2006, deposition of Gerald B.
 8 Stringfellow, in the ITC's investigation *In the Matter of Certain High-Brightness Light Emitting*
 9 *Diodes and Products Containing Same*, USITC Inv. No. 337-TA-556, which was admitted as
 10 Complainant's Exhibit 609C in that investigation. This document is confidential and subject to
 11 the Protective Order entered by the administrative law judge in the ITC Investigation. A copy of
 12 that Protective Order has been submitted as Exhibit A to the Declaration of Andrew J. Wu in
 13 Support of Philips Lumileds Lighting Company's Motion to Stay ("Wu Declaration"), filed with
 14 this Court on January 31, 2008, with Lumileds' motion to stay the present litigation; and

15 11. Exhibit 14 to the Declaration of Ryan Scher in Support of Philips Lumileds
 16 Lighting Company, LLC's Motion for Summary Judgment on Epistar Corp.'s Claim for Breach
 17 of Contract is a true and correct copy of excerpts from Lumileds Lighting U.S. LLC's Notice Of
 18 Motion And Motion To Compel Discovery From Epistar Corporation [Replacement], which it
 19 filed on March 10, 2004, in the action *Lumileds Lighting U.S., LLC v. Epistar Corp.*, Case No. C
 20 02-5077 CW (PVT) (N.D. Cal.). This document is confidential and subject to the Stipulated
 21 Protective Order in the case *Lumileds Lighting U.S., LLC v. Epistar Corporation*, Case No. 02-
 22 5077 CW (EAI) (N.D. Cal.) attached as Exhibit A to the Declaration of Michael Lyons in the
 23 following declaration; and

24 12. Exhibit 15 to the Declaration of Ryan Scher in Support of Philips Lumileds
 25 Lighting Company, LLC's Motion for Summary Judgment on Epistar Corp.'s Claim for Breach
 26 of Contract is a true and correct copy of excerpts from Epistar Corporation's Opposition To
 27 Lumileds Lighting U.S., LLC's Motion To Compel Discovery, which it filed on March 16, 2004,
 28 in *Lumileds Lighting U.S., LLC v. Epistar Corp.*, Case No. C 02-5077 CW (PVT) (N.D. Cal).

1 This document is confidential and subject to the Stipulated Protective Order in the case *Lumileds*
 2 *Lighting U.S., LLC v. Epistar Corporation*, Case No. 02-5077 CW (EAI) (N.D. Cal.) attached as
 3 Exhibit A to the Declaration of Michael Lyons in the following declaration; and

4 13. Exhibit 16 to the Declaration of Ryan Scher in Support of Philips Lumileds
 5 Lighting Company, LLC's Motion for Summary Judgment on Epistar Corp.'s Claim for Breach
 6 of Contract is a true and correct copy of excerpts from Lumileds Lighting U.S., LLC's Reply In
 7 Support Of Its Motion To Compel Discovery From Epistar Corporation, which it filed on March
 8 23, 2004, in the action *Lumileds Lighting U.S., LLC v. Epistar Corp.*, Case No. C 02-5077 CW
 9 (PVT). This document is confidential and subject to the Stipulated Protective Order in the case
 10 *Lumileds Lighting U.S., LLC v. Epistar Corporation*, Case No. 02-5077 CW (EAI) (N.D. Cal.)
 11 attached as Exhibit A to the Declaration of Michael Lyons in the following declaration; and

12 14. Exhibit 18 to the Declaration of Ryan Scher in Support of Philips Lumileds
 13 Lighting Company, LLC's Motion for Summary Judgment on Epistar Corp.'s Claim for Breach
 14 of Contract is a true and correct copy of excerpts from the Order Granting Defendants' Motion
 15 For Summary Judgment In Part And Denying Plaintiff's Cross-Motion For Summary Judgment,
 16 which was entered on June 14, 2001, in the consolidated action *United Epitaxy Company, Ltd. v.*
 17 *Hewlett-Packard Co.*, No. C 00-2518 CW (N.D. Cal.). This document is confidential and subject
 18 to the Protective Order in the case *United Epitaxy Company, Ltd. v. Hewlett-Packard Co.*, No. C
 19 00-2518 CW (N.D. Cal.) attached as Exhibit B to the Declaration of Michael Lyons in the
 20 following declaration; and

21 15. Exhibit 19 to the Declaration of Ryan Scher in Support of Philips Lumileds
 22 Lighting Company, LLC's Motion for Summary Judgment on Epistar Corp.'s Claim for Breach
 23 of Contract is a true and correct copy of Epistar's demonstrative exhibits RDX 500 (depicting
 24 Epistar's OMA I) and RDX 501 (depicting Epistar's OMA II), which were admitted into evidence
 25 in the ITC's investigation *In the Matter of Certain High-Brightness Light Emitting Diodes and*
 26 *Products Containing Same*, USITC Inv. No. 337-TA-556. This document is confidential and
 27 subject to the Protective Order entered by the administrative law judge in the ITC Investigation.
 28 A copy of that Protective Order has been submitted as Exhibit A to the Declaration of Andrew J.

1 Wu in Support of Philips Lumileds Lighting Company's Motion to Stay ("Wu Declaration"),
 2 filed with this Court on January 31, 2008, with Lumileds' motion to stay the present litigation;
 3 and

4 16. Exhibit 20 to the Declaration of Ryan Scher in Support of Philips Lumileds
 5 Lighting Company, LLC's Motion for Summary Judgment on Epistar Corp.'s Claim for Breach
 6 of Contract is a true and correct copy of Deposition Exhibit 15 from the January 29, 2004,
 7 Deposition of Mr. M.J. Jou in the action *Lumileds Lighting U.S. LLC v. Epistar Corporation*,
 8 Case No. C-02-05077 CW (N.D. Cal.), which was admitted into evidence as CX 427C in ITC's
 9 investigation *In the Matter of Certain High-Brightness Light Emitting Diodes and Products*
 10 *Containing Same*, USITC Inv. No. 337-TA-556. This document is confidential and subject to the
 11 Protective Order entered by the administrative law judge in the ITC Investigation. A copy of that
 12 Protective Order has been submitted as Exhibit A to the Declaration of Andrew J. Wu in Support
 13 of Philips Lumileds Lighting Company's Motion to Stay ("Wu Declaration"), filed with this
 14 Court on January 31, 2008, with Lumileds' motion to stay the present litigation; and

15 17. Exhibit 21 to the Declaration of Ryan Scher in Support of Philips Lumileds
 16 Lighting Company, LLC's Motion for Summary Judgment on Epistar Corp.'s Claim for Breach
 17 of Contract is a true and correct copy of excerpts from the January 29, 2004, 30(b)(6) Deposition
 18 Of Ming-Jiunn Jou, which was taken in the action *Lumileds Lighting U.S. LLC v. Epistar*
 19 *Corporation*, Case No. C-02-05077 CW (N.D. Cal.). This document is confidential and subject
 20 to the Stipulated Protective Order in the case *Lumileds Lighting U.S., LLC v. Epistar*
 21 *Corporation*, Case No. 02-5077 CW (EAI) (N.D. Cal.) attached as Exhibit A to the Declaration of
 22 Michael Lyons in the following declaration.

23 Lumileds will lodge the aforementioned documents in hard copy with the Court as well as
 24 lodge a redacted version of the Motion for Summary Judgment. This request is supported by the
 25 following declaration.

1 For the foregoing reasons, Lumileds requests that the Court order the above documents
2 sealed pursuant to the Protective Order entered by the administrative law judge in the ITC
3 Investigation.

4 Dated: June 5, 2008

Respectfully Submitted,

MORGAN, LEWIS & BOCKIUS LLP

7 By /s/ Michael J. Lyons

8 Michael J. Lyons
9 Attorneys for Defendant and
Counterclaimant
10 Phillips Lumileds Lighting Company, LLC

11 I, Michael J. Lyons, declare as follows:

12 1. I am an attorney at the law firm of Morgan, Lewis & Bockius LLP, attorneys for
13 Philips Lumileds Lighting Company, LLC. I am a member in good standing of the Bar of the
14 State of California and admitted to practice in the United States District Court for the Northern
15 District of California. I submit this declaration in support of the above Administrative Request to
16 File Documents Under Seal Pursuant to Civil L.R. 79-5.

17 2. I have personal knowledge of each statement set forth in the Administrative
18 Request to File Under Seal Pursuant to Civil L.R. 79-5, and each such statement is true and
19 correct.

20 3. Exhibit A is a true and correct copy of the Stipulated Protective Order entered into
21 by Lumileds Lighting U.S., LLC (now Philips Lumileds Lighting Co., LLC) and Epistar
22 Corporation on December 3, 2003.

23 4. Exhibit B is a true and correct copy of the Protective Order entered into by United
24 Epitaxy Company, Ltd. and Hewlett-Packard Company, et al. on January 9, 2001.

25 I declare under penalty of perjury that the foregoing is true and correct. Executed on this
26 the 5th day of June 2008 in Washington, D.C.

27 /s/ Michael J. Lyons

ATTESTATION PURSUANT TO GENERAL ORDER 45

I, Amy M. Spicer, am the ECF user whose ID and password are being used to file this Administrative Request to File Under Seal Pursuant to Civil L.R. 79-5. In compliance with General Order 45.X.B., I declare under the penalty of perjury under the laws of the United States of America that Michael J. Lyons has concurred in this filing.

Executed this 5th day of June 2008, at San Francisco, California.

/s/ Amy M. Spicer